PERUMAL A/L MANICKAM

v.

THE MALAYSIAN CO-OPERATIVE INSURANCE SOCIETY LIMITED

HIGH COURT MALAYA, KOTA BHARU
TUAN IDRIS BIN YUSOFF J
[ORIGINATING SUMMONS NO. 24-156-93]
21 FEBRUARY 1995

***INSURANCE LAW**: Fatal accident - Deceased insured - Claim by father of deceased as proper claimant for policy moneys - Delay in payment as deceased's birth certificate not produced - Whether production of birth certificate is a condition precedent to payment of policy moneys - Section 15A Insurance Act 1963 - When policy moneys are payable - Section 44 Insurance Act 1963 - Whether interest is payable for late payment of policy moneys - Section 11 Civil Law Act 1956.*

***INSURANCE LAW**: Section 44 Insurance Act 1963 - Position of insurers upon making of payment under s. 44 to a proper claimant where named beneficiary does not qualify to being a proper claimant or where there is more than one proper claimant.*

***PRACTICE & PROCEDURE**: Application for declaration that plaintiff is legally entitled to all policy moneys under endowment policy taken out in name of plaintiff's deceased's son and that the defendant pays the policy moneys to the plaintiff as a proper claimant within the meaning of s. 44 of the Insurance Act 1963 - Claim for interest - Whether plaintiff entitled to all policy moneys - Whether plaintiff entitled to interest on policy moneys - Section 11 Civil Law Act 1956.*

***STATUTORY INTERPRETATION**: Section 44(1) Insurance Act 1963 - Meaning of "are payable".*

***WORDS & PHRASES**: "debt".*

The plaintiff filed an originating summons seeking a declaration that he was legally entitled to all policy moneys under an endowment policy issued by the defendant and taken out in the name of the plaintiff's deceased son and for an order that the defendant pays the policy moneys to the plaintiff as the proper claimant within the meaning of s.44 of the Insurance Act 1963 (the Act) as well as interest and cost.

On 24 December 1990, prior to the deceased's death, the deceased had submitted "a proposal for assurance" together with a "Declaration and Authorisation" to the defendant which was accepted and a policy was subsequently issued. The age of the deceased stated in the policy schedule was 16 years but there was a remark "NOT ADMITTED" against the figure 16. Further, a footnote at paragraph 3 of the proposal form stated "Evidence of age must be submitted with this proposal form or soon after acceptance".

After his son's death, the plaintiff submitted to the defendant a "Death Claim Application" and as there was no beneficiary named in the policy, the plaintiff made the claim in the capacity of a "proper claimant". The plaintiff was requested to furnish certain documents amongst which was the deceased's birth certificate to verify that he was the proper claimant but he was unable to do so until 11 July 1994 when a certified copy of the birth certificate was served on the defendant. Thereafter the defendant conceded that the plaintiff was a proper claimant and entitled to the policy moneys but the defendant denied responsibility for the delay on paying out the moneys.

The defendant maintained that the birth certificate was vital to determine the deceased's age at the time of his death and in line with s. 15A of the Act whereby proof of the deceased's age could be termed a condition precedent to the payment of the sum insured. Counsel for the plaintiff contended that such condition precedent was not found in the policy and that the death certificate was sufficient. Furthermore, Counsel claimed that pursuant to s.44 of the Act, the defendant should be held responsible for the delay in payment of the policy moneys. Counsel for the plaintiff also claimed interest at 8% per annum or higher was payable on the policy moneys from the date of death in view of the delay in settling the claim.

Counsel for the defendant denied any unlawful witholding of the moneys which delay could have been avoided if the birth certificate had been made available to the defendant at an earlier stage. On the question of interest defendant's Counsel submitted that there was no provision in the policy entitling the plaintiff to claim for interest on "overdue" payment and the policy moneys due to the plaintiff neither ranked as debt nor as damages. Counsel also raised an ancillary issue regarding the position of insurers upon making payment under s. 44 to a proper claimant where the named beneficiary did not qualify as a proper claimant and the possible confusion when there was more than one proper claimant.

Held:

[1] It is obvious that payment would be made upon proof satisfactory to the defendant on the correctness of the date of birth of the deceased as stated in the Proposal and Declaration. The defendant has fulfilled the requirement of s.15A by stating on the policy and at the footnote of the proposal form that proof of the deceased's age may be required prior to the payment of the sum insured. Therefore, the proof of correctness of the deceased's date of birth as stated in the Proposal and Declaration constitutes a condition precedent to the payment of the policy moneys.

[2] To ascertain as to when the policy moneys are payable the Court has to take cognisance of the relevant terms of the policy. There ought to be due compliance with the three prerequisites as set out under "Consideration" before the policy moneys are payable - and these are terms relevant in the policy. The Court is therefore inclined to say that the words "are payable" refer to the obligation to pay, though not necessarily that payment should be made immediately upon death.

[3] It is clear that the estate of the deceased has been kept out of the insurance moneys to which it is entitled. In the final analysis, the plaintiff is entitled to payment of interest on the policy moneys, but not from the date of the deceased's death as claimed; it is payable only from the date when the deceased's birth certificate was served on the defendant.

[4] On the question of the ancillary issue, the position of the insurers still remain unaffected for so long as payments are made to proper claimants or any of the proper claimants. This is because the role of a proper claimant as contemplated by s. 44 is to receive the moneys on behalf of the estate of the deceased. Subsection (5) of the said section does not confer any authority on a proper claimant to utilise the moneys for his or her own use - and if he or she happens to be one of the beneficiaries of the deceased's estate not until after obtaining the distribution order under the relevant law.

[Application allowed with each party to bear their own costs].

Cases referred to:

Manonmani v. Great Eastern Life Insurance Ltd. [1991] 1 MLJ 364 ***(foll)***

United Malayan Banking Corp. v. Syarikat Perumahan Luas Sdn. Bhd. [1991] 3 MLJ 181 ***(foll)***

Legislation referred to:
Civil Law Act 1956, s. 11
Insurance Act 1963 ss. 15A, 44, 44(5)

Other sources referred to:
Dictionary of Law, L.B. Curzon
Stroud's Judicial Dictionary
The Oxford Companion To Law

For the plaintiff - G. Naidu; M/s. Naidu & Partners
For the defendant - Balakumar; M/s. Azim, Ong & Krishnan

JUDGMENT

Idris B Yusoff J:

This originating summons is brought by the plaintiff on this state of facts:

The plaintiff is the father of the assured, one named Magindran s/o Perumal who died on 25 August 1991 following a motor accident. At the time of his death the deceased was still single and was about 16 years and 4 months in age.

About 4 months before his death i.e on 24 December 1990 the deceased submitted "a proposal for assurance" coupled with a "Declaration and Authorisation" to the defendant which was subsequently accepted. The policy was issued by the defendant on 8 January 1991 *vide* Exhibit 'PM(A)'. It is noted that the deceased's age as stated in the policy schedule is 16 years and this is presumably taken from the proposal form. However, there is a remark "Not Admitted' against the figure 16. It is also noted that there is a footnote in para. 3 of the proposal form in the following words "Evidence of age must be submitted with this proposal form or soon after acceptance". There is no beneficiary named in the policy and thus the claim is made by the plaintiff in his capacity as a "proper claimant".

Following the death of the deceased the plaintiff submitted to the defendant a "Death Claim Application". It is not known when the application was actually submitted as it bears no date inspite of it being witnessed by an advocate and solicitor.

When no payment was made, the plaintiff then on 2 June 1993 filed this originating summons seeking the following reliefs:

a) A declaration that the plaintiff is legally entitled to all policy moneys under "An Endowment Policy No. L 0407392" issued by the defendant and taken out in the name of the deceased.

b) An order that the defendant pays the said policy moneys to the plaintiff in his capacity as a proper claimant within the meaning of s. 44 of the Insurance Act 1963 (the Act).

c) Interest at the rate of 8% per annum or at any higher rate effective from the date of the deceased's death and

d) Costs.

From the affidavit-in-reply deposed by Encik Chandrarajah, pengurus bahagian perkhidmatan pelanggan, on behalf of the defendant and the exhibits thereto, it is observed that the plaintiff had been requested to furnish certain documents to indicate that he is the sole proper claimant and among the documents requested for was the deceased's birth certificate. For some reasons the plaintiff was not able to produce the said certificate and it was only on 11 July 1994 that the defendant was finally served by the plaintiff with the certified copy of the

requisite birth certificate. On the strength of the said birth certificate the defendant concedes that the plaintiff is a proper claimant and is therefore entitled to be paid the policy moneys. Be that as it may the defendant claims that in no way can it be held responsible for the delay in paying out the policy moneys. The defendant maintains that the birth certificate constitutes a vital document in the determination of the deceased's age at the time of his death and this request is in line with the provisions of s. 15A of the Act whereupon proof of the age of the deceased in the circumstances can be termed as a condition precedent to the payment of the sum insured.

For the plaintiff it is contended that as the defendant seems to be aware that the plaintiff was the sole surviving parent of the deceased there was therefore, no necessity for the production of the birth certificate. I think I should pause here to clarify what the defendant actually said in one of the letters to the plaintiff's Counsel. It says "It is noted in the proposal form that Encik Perumal s/o Manickam (the plaintiff in this summons) is the sole surviving parent of the deceased. Please confirm the statement". There seems to be nothing in the letter even to suggest, let alone to confirm that the defendant had acknowledged the plaintiff as the father of the deceased.

The crux of the matter having regard to the affidavits of both parties is whether the production of birth certificate is a condition precedent to the payment of the policy moneys. In this respect Counsel for the plaintiff contends that there is no where stated in the policy that "the production of the birth certificate shall be a condition precedent to the payment" of the policy moneys. He goes on to say that even if it is held that it is a condition precedent the defendant has failed to comply with s. 15A of the Act, thus he says that the death certificate in itself is sufficient since "it is issued by the authorities". I regret to say that I am not with him on this point.

Section 15A of the Act says:

> 15A. Notice regarding proof of age.
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> Where an insurer issues a life policy which provides that proof of age of the life insured is a condition precedent to the payment of the sum, the insurer shall, unless the age of the life insured has already been admitted by the insurer, issue on or with the policy a printed notice stating that proof of age of the life insured may be required prior to the payment of the sum insured.

On reference to the policy there is stated under the heading "Consideration":

> 1. Consideration
>
> In consideration of the payment by the Assured to the Society of a first premium of the amount specified as Basic Premium in the Schedule and also in consideration of the payment to the Society of a renewal premium of the same amount immediately upon the expiration of each Premium interval (the first of which shall be computed from the Entry Date) which shall occur before (a) the end of the Term or (b) the death of the Life Assured whichever of such events shall first happen, the Society will pay at its Head Office for the time being, the Basic sum Assured to the Assured or the executors, administrators or assigns of the Assured on delivery of this policy document and on proof satisfactory to the Society being given of (a) the survival by the Life Assured of the Term or the death of the Life Assured whichever of such events shall first happen, (b) the title of the claimant, and (c) **the correctness of the date of birth of the Life Assured as stated in the Proposal and Declaration.** (Emphasis added)

From the above excerpt it is obvious that payment would be made upon proof satisfactory to the defendant being given on, amongst others, the correctness of the date of birth of the deceased as stated in the Proposal and Declaration. And since it is clearly spelt out as such to my mind, the defendant has fulfilled the requirement of s. 15A by issuing "on the policy a printed notice" stating that proof of the age of the deceased may be required prior to the payment of the sum insured. Quite apart from the statutory requirement the footnote in para. 3 of the proposal form (which is declared to be the basis of the Contract of Insurance as indeed admitted to by plaintiff's Counsel) requires that evidence of age of the deceased be submitted with the form or soon after acceptance, all the more when in this case the defendant had not admitted the age of the deceased as given in the form.

In view of the foregoing I hold that proof of the correctness of the deceased's date of birth as stated in the Proposal and Declaration constitutes a condition precedent to the payment of the policy moneys.

It is also submitted by Counsel for the plaintiff that on the authority of *Manonmani v. Great Eastern Life Insurance Ltd*. [1991] 1 MLJ 364, which explains the purport and meaning of s. 44 of the Act, the defendant should now be held responsible for the delay in the payment of the policy moneys. In that case His Lordship Mr. Justice Eusoff Chin (as he then was) held amongst others that:

> ... The purpose of s. 44 of the Insurance Act 1963 is no doubt to facilitate and expedite payment by an insurer of any money due under a life policy to a 'proper claimant' without the need for the claimant to first obtain any letters of administration. This section would, I believe, apply where the deceased policy owner either had not appointed and named any beneficiary in the policy to receive the policy money upon his death in which case the policy money would go to his estate, or he had specifically stated in the policy that the policy money should go to his estate when he died. In that event, the insurer is nevertheless authorized by this section to pay out the policy money to a `proper claimant' as described under s. 44(5) of the Insurance Act 1963, ...

For convenience I reproduce below what s. 44 says:

> 44. Payment of life policy claim without probate, etc.
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> (1) When a policy owner, in relation to any life policy or life policies, **dies and on his death policy moneys are payable under the policy or policies**, the insurer may make payment to a proper claimant such sum of the policy moneys as may be prescribed without the production of any probate or letters of administration and the insurer shall be discharged from all liability in respect of the sum paid.
>
> (2) ...
>
> (3) ...
>
> (4) ...
>
> (5) In this section, "policy owner" includes a part owner of a policy, and "proper claimant" means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum (whether for his own benefit or not) and is the widower, widow, parent, child, brother, sister, nephew or niece of the deceased; and in deducing any relationship for the purposes of this subsection an illegitimate person shall be treated as the legitimate child of his actual parents.

In view of the words underlined it is clear that moneys that are payable under the policy can be paid to the proper claimant - but when can it be said that moneys are payable under the policy - could it be said that immediately upon the death of the deceased. I have grave

doubts if it is truly to be interpreted as such. To my mind to ascertain as to when the policy moneys are payable the Court in the circumstances has also to take cognisance of the relevant terms of the policy. And as I have indicated earlier there ought to be due compliance with the three prerequisites as set out under "Consideration" before the policy moneys are payable - and these are terms relevant in the policy. I am therefore inclined to say that the words "are payable" refer to the obligation to pay, though not necessarily that payment should be made immediately upon death.

Next comes the question of interest. Counsel for the plaintiff claims that interest at 8 % per annum or at any higher rate is payable on the policy moneys from the date of death in view of the delay in settling the claim.

In reply Counsel for the defendant denies any unlawful or unjust withholding of the moneys. He says the delay can easily be obviated if the birth certificate could have been made available to the defendant in the early stages of the correspondence between the parties. In the event he disagrees that the delay could be attributed to the defendant. Still on interest Counsel for the defendant feels that there are no provisions in the policy to entitle the plaintiff to claim for interest on "overdue" payment. It at all the Court is mindful of payment of interest, the substantive provision regarding the interest element perhaps can be found in s. 11 of the Civil Law Act 1956. Section 11 says:

> 11. In any proceedings tried by any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:
>
> Provided that nothing in this section-
>
> (a) shall authorise the giving of interest upon interest;
>
> (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
>
> (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

Counsel submits that the policy moneys due to the plaintiff neither rank as debt nor as damages. He claims that the pronouncements prayed for in the present proceedings do not crystalise as a judgment, rather as an order of the Court.

On the other hand, Counsel for the plaintiff argues that the word "debt" has been defined in the *Dictionary of Law* by L.B. Curzon as "A sum that one person is bound to pay to another. Debt normally has one or other of two meanings: it can mean obligation to pay money or it can mean a sum of money owed". *Stroud's Judicial Dictionary* says "A debt is a sum payable in respect of a liquidated money demand, recoverable by action". *The Oxford Companion To Law* speaks of a debt as "that which is owed by one person to another, particularly money payable arising from and by reason of a prior promise or contract ....". For myself, to resolve this issue I would only content myself with what had been said by Edgar Joseph Jr. J (as he then was) in *United Malayan Banking Corp. v. Syarikat Perumahan Luas Sdn. Bhd*. [1991] 3 MLJ 181 at 186:

> It is too well known to need citation of authority that the object of an award of interest is not to compensate a successful party for any damage done but for him being kept out of his money.

In the instant case, it is clear that the estate of the deceased has been kept out of the insurance moneys to which it is entitled. In the final analysis I hold that the plaintiff is entitled to payment of interest on the policy moneys, but not from the date of the deceased's death as claimed; it is payable only from the date when the deceased's birth certificate was served on the defendant *viz*. 11 July 1994.

For the purpose of guidance, Counsel for the defendant raises an ancillary issue regarding the position of the insurers upon making payment under s. 44 to a proper claimant. Following the decision in *Manonmani* he says the position of the insurers has now been made clear. The insurers are absolved from further liabilities under the policies once the policy moneys are paid to proper claimants and what is more, if the beneficiary named in the policy is a person who comes within the category of a proper claimant the moneys should be disbursed to the said person. However, there is one fear raised by him where in a certain situation the named beneficiary does not qualify to be a proper claimant. It would appear to him that in the situation of that nature the operation of s. 44 may cause confusion on the part of the insurers especially when there is more than one proper claimants. With respect I think the defendant should not be unduly concerned about this for the position of the insurers still remains unaffected for so long as payments are made to proper claimants or any of the proper claimants. This is because the role of a proper claimant as contemplated by s. 44 is to receive the moneys on behalf of the estate of the deceased. Subsection (5) of the said section does not confer any authority on a proper claimant to utilise the moneys for his or her own use - and if he or she happens to be one of the beneficiaries of the deceased's estate not until after obtaining the distribution order under the relevant law.

Accordingly I hold that:

(a) the plaintiff is entitled to all the policy moneys under the "Endowment Policy No. L0407392" issued by the defendant and taken out in the name of the deceased if there be no other beneficiary to the estate of the deceased,

(b) the defendant is ordered to pay the said policy moneys to the plaintiff in his capacity as a proper claimant within the meaning of s. 44 of the Insurance Act 1963,

(c) interest at the rate of 8% per annum to be paid to the plaintiff which is to take effect from 11 July 1994 till the date of full payment of the policy moneys and

(d) each party to bear own costs.